



Attorney Docket: 00023.04CON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joshua D. Rabinowitz, et al.) Examiner: M. Haghighatian
Serial No.: 10/814,998) Group Art Unit: 1616
Filing Date: March 31, 2004) Confirmation No.: 8190
For: DELIVERY OF MUSCLE RELAXANTS)
THROUGH AN INHALATION ROUTE)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INFORMATION DISCLOSURE STATEMENT

Applicant calls the Examiner's attention to the patents and publications listed on the attached Form PTO-1449, copies of required documents enclosed, which may be material to examination of the above identified application.

TIME OF TRANSMITTAL

This Information Disclosure Statement is being submitted under 37 CFR § 1.97(c). This Statement is filed after three months from the filing date of the national application, after three months from the date of entry into national stage under 37 CFR § 1.491, after the mailing of a first Office Action on the merits, or after the mailing of a first Office Action after the filing of a request for continued examination under 37 CFR § 1.114, but before the mailing date of any of:

- (a) a final action under 37 CFR § 1.113;
- (b) a notice of allowance under 37 CFR § 1.311; or
- (c) an action that otherwise closes prosecution in the application.

This Statement is accompanied by a check for \$180 in accordance with 37 CFR §§1.97(c) and 1.17(p). The undersigned hereby authorizes the charging of any deficiency of fees submitted herewith to Deposit Account No. 19-5117.

37 CFR 1.8

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 9/15/05

Signature: Tasha L. Pierce

Name: Tasha L. Pierce

09/21/2005 AWGDAF1 00000010 10814998 180.00 OP 04 FC:1806

Claim	Examples of Support in the Specification
Claim 36	Paragraph 0025
Claim 37	As recited above for Claim 35
Claim 38	Paragraph 0017
Claim 39	Paragraph 0017
Claim 40	Paragraph 0096
Claim 41	Paragraph 0020
Claim 42	Paragraph 0021
Claim 43	Paragraph 0022
Claim 44	Paragraph 0023
Claim 45	As recited above for Claim 35 and Paragraph 0015, 0017, 0020, 0027
Claim 46	As recited above for Claim 35 and Paragraph 0015, 0017, 0021, 0027
Claim 47	As recited above for Claim 35 and Paragraph 0015, 0017, 0022, 0027
Claim 48	As recited above for Claim 35 and Paragraph 0015, 0017, 0023, 0027
Claim 49	As recited above for Claim 35 and Paragraph 0015, 0017, 0020, 0027
Claim 50	As recited above for Claim 35 and Paragraph 0015, 0017, 0021, 0027
Claim 51	As recited above for Claim 35 and Paragraph 0015, 0017, 0022, 0027
Claim 52	As recited above for Claim 35 and Paragraph 0015, 0017, 0023, 0027

The amendments to the claims do not introduce new matter. Applicants respectfully submit that the amendments to the claims put the case in condition for allowance. The Examiner is respectfully requested to enter the amendments to the claims and allow all amended claims.

Double Patenting

Claims 1-24 were rejected under the judicially created doctrine of obviousness-type double patent as being unpatentable over claims of U.S. Patent No. 6,797,259 B2, as these claims are “either anticipated by, or would have been obvious over, the reference claims.” Office Action at 2-3.

Claims 1-12 were provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application Nos. 10/813,722 and 10/718,982. *Id.* at 3-4.

Applicants have filed with this response Terminal Disclaimers with regard to U.S. Patent No. 6,797,259 B2 and copending Application Nos. 10/813,722 and 10/718,982. Applicants believe that this addresses the Examiner’s concerns and respectfully request reconsideration of the application, withdrawal of all rejections, and allowance of the application in view of these actions and remarks.

Conclusion

The Applicants appreciate the Examiner’s careful and thorough review of the application and submit that the Examiner’s concerns have been addressed by the amendments and remarks above. The Applicants accordingly request the Examiner to withdraw all rejections and allow the application. In the event the Examiner believes a telephonic discussion would expedite allowance or help to resolve outstanding issues, prosecution of the application, then the Examiner is invited to call the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date: September 15, 2005

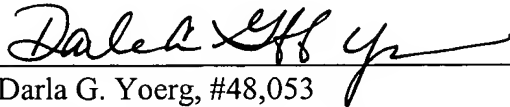


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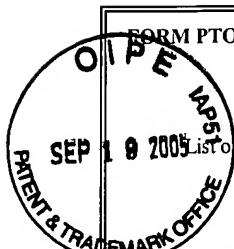
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The filing of this Information Disclosure Statement shall not be construed as an admission against interest in any manner. This listed patents and publications are believed of interest herein and consideration and citation of as interest by Examiner is respectfully requested.

Respectfully submitted,

Date: September 15, 2005 
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	FORM PTO-1449 U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. 00023.04CON	SERIAL NO. 10/814,998
	List of Information Cited by Applicant Page 1 of 3	APPLICANT Rabinowitz, et al.	
	FILING DATE March 31, 2004	GROUP 1616	

U.S. PATENT DOCUMENTS							
EXAM. INITIAL		DOCUMENT NUMBER	DATE	NAME	CLS	SUB- CLS	FILE DATE
	AA	10/057,198	10/26/2001	Lloyd et al.			
	AB	10/146,088	05/13/2002	Hale et al.			
	AC	10/280,315	10/25/2002	Shen			
	AD	10/302,614	11/21/2002	Lu			
	AE	10/322,227	12/17/2002	Novack et al.			
	AF	10/442,385	05/20/2003	Cross et al.			
	AG	10/719,540	11/20/2003	Hale et al.			
	AH	10/750,303	12/30/2003	Rabinowitz et al.			
	AI	10/850,895	05/20/2004	Damani et al.			
	AJ	10/851,018	05/20/2004	Hale et al.			
	AK	10/851,429	05/20/2004	Hale et al.			
	AL	10/851,432	05/20/2004	Hale et al.			
	AM	10/851,883	05/20/2004	Hale et al.			
	AN	10/861,554	06/03/2004	Cross et al.			
	AO	10/912,417	08/04/2004	Bennett et al.			
	AP	10/917,720	08/12/2004	Hale et al.			
	AQ	10/917,735	08/12/2004	Hale et al.			

FOREIGN PATENT DOCUMENTS							
EXAM. INITIAL		DOCUMENT NUMBER	DATE	COUNTRY	CLS	SUB CLS	TRANS ?
	AR	GB 502 761	03/24/1939	Great Britain			
	AS	WO 94/09842	05/11/1994	WIPO			
	AT	WO 97/36574	10/09/1997	WIPO			
	AU	WO 03/37412	05/08/2003	WIPO			

OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)	
AV	Office Action mailed 12/04/03 for US App. No. 10/057,198 filed 10/26/01, "Method And Device For Delivering A Physiologically Active Compound"
AW	Office Action mailed 01/12/05 for US App. No. 10/057,197 filed 10/26/01, "Aerosol Generating Device And Method"
AX	Office Action mailed 06/03/04 for US App. No. 10/057,197 filed 10/26/01, "Aerosol Generating Device And Method"
AY	Office Action mailed 12/15/03 for US App. No. 10/057,197 filed 10/26/01, "Aerosol Generating Device And Method"
AZ	Office Action mailed 02/27/04 for US App. No. 10/146,080 filed 05/13/02, "Aerosol Forming Device For Use In Inhalation Therapy"
EXAMINER	DATE CONSIDERED
*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and <u>not</u> considered. Include copy of this form with next communication to applicant.	

FORM PTO-1449 U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE List of Information Cited by Applicant Page 2 of 3	ATTY. DOCKET NO. 00023.04CON	SERIAL NO. 10/814,998
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	FILING DATE March 31, 2004	GROUP 1616

U.S. PATENT DOCUMENTS							
EXAM. INITIAL		DOCUMENT NUMBER	DATE	NAME	CLS	SUB- CLS	FILE DATE
	BA	3,219,533	11/23/1965	Mullins			
	BB	3,949,743	04/13/1976	Shanbrom			
	BC	3,982,095	09/21/1976	Robinson			
	BD	4,141,369	02/27/1979	Burruss			
	BE	4,303,083	12/01/1981	Burruss, Jr.			
	BF	4,474,191	10/02/1984	Steiner			
	BG	4,484,576	11/27/1984	Albarda			
	BH	4,566,451	01/28/1986	Badewien			
	BI	4,708,151	11/24/1987	Shelar			
	BJ	4,734,560	03/29/1988	Bowen			
	BK	4,735,217	04/05/1988	Gerth et al.			
	BL	4,819,665	04/11/1989	Roberts et al.			
	BM	4,848,374	07/18/1989	Chard et al.			
	BN	4,853,517	08/01/1989	Bowen et al.			
	BO	4,906,417	03/06/1990	Gentry			
	BP	4,917,119	04/17/1990	Potter et al.			
	BQ	4,924,883	05/15/1990	Perfetti et al.			
	BR	4,941,483	07/17/1990	Ridings et al.			
	BS	4,963,289	10/16/1990	Ortiz et al.			
	BT	5,042,509	08/27/1991	Banerjee et al.			
	BU	5,060,671	10/29/1991	Counts et al.			
	BV	5,099,861	03/31/1992	Clearman et al.			
	BW	5,135,009	08/04/1992	Muller et al.			
	BX	5,144,962	09/08/1992	Counts et al.			
	BY	5,146,915	09/15/1992	Montgomery			
	BZ	5,224,498	07/06/1993	Deevi et al.			
	BAA	5,345,951	09/13/1994	Serrano et al.			
	BBB	5,366,770	11/22/1994	Wang			
	BCC	5,456,247	10/10/1995	Shilling et al.			
	BDD	5,511,726	04/30/1996	Greenspan et al.			
	BEE	5,564,442	10/15/1996	MacDonald et al.			
	BFF	5,592,934	01/14/1997	Thwaites			
	BGG	5,605,146	02/25/1997	Sarela			
	BHH	5,649,554	07/22/1997	Sprinkel et al.			
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